

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC

listed as a party, counsel was told that the Notice was not received in the General Counsel's office until December 24, 2002 and thus deemed late-filed. Accordingly, CBI moves that the Copyright Office accept its Notice of Intent to Participate.

The Library considers motions to accept Notices of Intent to Participate which it deems late-filed applying a two- part test, the parts being 1) the disruption to the proceeding caused by allowing the moving party to participate; and 2) good cause for accepting the Notice. Order in Docket No. 99-3 CARP DD 95-98 (August 5, 1999); Order in Docket No. 99-6 DTRA (November 30, 1999). Both factors favor CBI's Motion.

Accepting the Notice filed in the Copyright General Counsel's office one day after December 23, 2002 will not disrupt the proceeding. The proceeding is at the most preliminary of stages. No schedule has yet been announced for the filing of direct cases, so preparation of direct cases cannot have been compromised. Thus there is no prejudice to other parties.

There is good cause for accepting the late-filed notice. CBI's counsel used Federal Express, a reliable overnight service, with the reasonable expectation of having CBI's notice received in the Copyright Office General Counsel's office on December 20, three days before the deadline. The envelope containing CBI's notices addressed to the General Counsel's office was in fact received by the Copyright Office's designated mail-receiving facility, signed for by "R. Williams," on December 20, 2002, three days before the deadline. The reason for the "late filing" of the Notice was the Copyright Office's standing order to Federal Express, in the aftermath of the 2001 anthrax incidents, to re-direct envelopes addressed to the General Counsel's office to a facility in Capitol

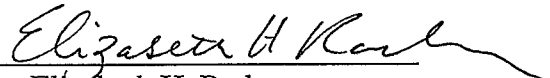
Heights, Maryland, so they may be irradiated to inactivate any dangerous biological substances. In these circumstances, CBI submits it would be appropriate for the Notice to be deemed received in the General Counsel's office as of the date received in the facility to which the Office intentionally diverted its incoming mail.

CBI has a record of timely filings in the rulemaking on requirements for notice and record keeping for use of sound recordings under statutory license. This weighs in favor of accepting its Notice. The harm to CBI and its members if they are prevented from participating in the CARP would be severe as it would lose the opportunity to participate in the process that has the potential to increase or decrease royalties and minimum fees paid by its stations. As CBI's members, in general, have small budgets, the royalty rates and minimums as a practical matter determine whether or not a member station can webcast at all. Additionally, the Panel itself would be deprived of useful evidence and legal briefing that CBI would offer on behalf of its education-affiliated, noncommercial, non-CPB member stations.

As there will be no disruption of the proceedings or prejudice to any party from accepting CBI's Notice and allowing it to participate and, whereas CBI has shown good cause why the Notice should be accepted, this motion to accept the Notice should be granted.

Dated: January 14, 2003

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 
Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517



STANFORD LAW SCHOOL

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Center for Internet and Society
Law and Technology Clinic

Tel: 650.723.5674
Fax: 650.723.4426

18 December 2002

Via Federal Express

Copyright Arbitration Royalty Panel
Office of the General Counsel
James Madison Memorial Building
Room LM-403
First and Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Notice of Intent to Participate
Docket No. 2002-1 CARP DTRA 3

Greetings:

Enclosed pursuant to your November 20, 2002 request for notices of intent to participate, please find an original plus five copies of Collegiate Broadcasters Inc.'s **Notice of Intent to Participate** in the Copyright Office's proceedings to adjust royalty rates and terms.

Sincerely,

Elizabeth H. Rader

EHR/jsn
Enclosures

cc: Mr. Will Robedee (with enclosures)

Digital Performance Right In Of Sound Recordings and Ephemeral Recordings

Houston TX 77005

Congress has provided the Librarian and the arbitration panel great latitude in determining how costs of royalty adjustment proceedings are to be apportioned among the participants. The risk that costs will be apportioned among participants without regard for their size or financial resources, as they were in CARP DTRA 1 & 2, raises a bar to participation for those who cannot afford to pay the arbitrators. CBI asks that the Copyright Office consider the needs of small entities and particularly of nonprofit broadcasters affiliated with educational institutions in establishing procedures for this CARP and make some provision for such organizations to participate without incurring prohibitive costs, such as waiving costs for such organizations or allowing such organizations to participate in a limited manner, for limited, pre-defined costs, or other measures in accordance with the Regulatory Flexibility Act, in order to provide the panel with sufficient evidence on which to base its decisions.

Dated: December 18, 2002

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 

Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517

FedEx Express
Customer Support
Domestic Trade
3876 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone 901-469-3600



January 10, 2003

IVRTRACK
(650) 723-4426

Dear IVRTRACK:

Our records reflect the following delivery information for the shipment with the tracking number 836798638310.

Delivery Information:

Signed For By: R.WILLIAMS

A handwritten signature in black ink, appearing to read "R. Williams", followed by a vertical line.

Delivered to: 9140 E HAMP DR CAP HTS MD

Delivery Date: December 20, 2002

Delivery Time: 12:00 PM

Shipping Information:

Shipment Reference Information: 1-DCD-092 WB8271

Tracking No: 836798638310

Ship Date: December 19, 2002

Shipper: ELIZABETH H RADER
CR
CR
STA, CA 943058610
US

Recipient: DAVID CARSON ESQ
COPRIGHT ARBITRATION
ROYALTY
1ST INDEPENDENCE AVE SE
LM-403
WASHINGTON, DC 20559
US

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service
1-800-Go-FedEx (1-800-463-3339)
Reference No: R2003011000068096302

This Information is provided subject to the FedEx Service Guide.

PROOF OF SERVICE

I, Joanne Newman do hereby certify and declare as follows:

I am over the age of 18 years, and not a party to the instant proceedings. I am employed in the county of Santa Clara, California. My business address is: 559 Nathan Abbott Way, Stanford, California.

On January 14, 2003 I caused to be served the following document:

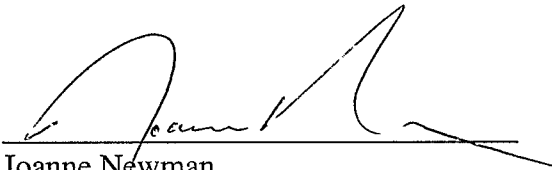
MOTION TO ACCEPT A LATE-FILED NOTICE OF INTENT TO PARTICIPATE

via **First Class Mail** by placing one true copy of the above document in a properly sealed and addressed envelope for regular mail delivery, and deposited in a station mailbox routinely maintained by the United States Post Office, in conformity with the usual business practices of Stanford University.

Proper service was made on the individuals appearing on the attached Service List.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January 2003 at Palo Alto, California.



Joanne Newman

SERVICE LIST
Docket No. 2002-1 CARP DTRA3

Kenneth L. Steintal
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
*Counsel for BET Interactive LLC, America
Online, Inc., MTV Networks, MusicMatch,
Inc., Yahoo! Inc., Live365 Inc., and
Listen.com*

Cary H. Sherman
Steven M. Marks
Susan Chertkof Munsat
Gary R. Greenstein
Recording Industry Association of America,
Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
*Counsel for Recording Industry
Association of America, Inc., and
SoundExchange*

Jim Hayes
Washington University
Campus Box 1068
One Brookings Drive
St. Louis, Missouri 63130

David D. Oxenford
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
*Counsel for Educational Media
Foundation and Aritaur Communications,
Inc.*

Patricia Polach
Bredhoff & Kaiser, PLLC
805 - 15th Street, N.W.
Suite 1000
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Musicians of the United States and Canada*

Michael N. Stone
Fun With Radio/WWCD
503 S. Front Street
Columbus, Ohio 43215

Bruce D. Sokler
Fernando R. Laguarda
Susan E. McDonald
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Music Choice

Bruce G. Joseph
Karyn K. Ablin
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
*Counsel for the National Religious
Broadcasters Music License Committee,
Salem Communications Corp., Clear
Channel Communications Inc., and Sirius
Satellite Radio Inc.*

Dusty Rhodes
WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, Colorado 80962

Alan D. Woodrum
Family of Faith Radio - WFPF
610 Third Street
PO Box 227
Covington, Indiana 47932

Kevin Shively
Beethoven.com, LLC
1039 Asylum Avenue
Hartford, Connecticut 06105

Joel R. Willer
University of Louisiana at Monroe
120 Stubbs Hall
401 Bayou Drive
Monroe, Louisiana 71209

Dave Black
602 State Street
Madison, Wisconsin 53703

David E. Kennedy
140 East Market Street
York, Pennsylvania 17401

Deborah S. Proctor
WCPE
P.O. Box 828
Wake Forest, North Carolina 27588-0828

Ann Robinson
218 MU East
Oregon State University
Corvallis, Oregon 97331

Michael D. LeMay
WORQ
1075 Brookwood Drive
Suite 2C
Green Bay, Wisconsin 54304-4135

Bill Keith
46181 Joy Road
Canton, Michigan 48187

John Crigler
Melodie A. Virtue
Garvey Schubert Barer
Fifth Floor, The Flour Mill Building
1000 Potomac Street, N.W.
Washington, D.C. 20007
*Counsel for National Federation of
Community Broadcasters*

Arthur J. Levine
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
1300 I Street, N.W.
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Television and Radio Artists*

Ann E. Chaitovitz
American Federation of Television and
Radio Artists
260 Madison Avenue
New York, New York 10016

William Malone
James R. Hobson
Miller and Van Eaton, PLLC
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4320
*Counsel for Intercollegiate Broadcasting
System, Inc., and Harvard Radio
Broadcasting Company*

Jonathan Potter
Digital Media Association
1120 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Seth D. Greenstein
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005
*Counsel for Digital Media Association and
Royalty Logic, Inc.*

Barry P. Miller
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
*Counsel for Bonneville International
Corporation*

Clifford M. Harrington
Barry H. Gottfried
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
Counsel for XM Satellite Radio, Inc.

Mildred Drake
WDFB
P.O. Box 106
Danville, Kentucky 40423-0106

John Meyer
Meyer Multimedia Services
Meyer Broadcasting Corporation
10200 South Broadway
Crown Point, Indiana 46307-8559

Shirley Garner
KYCC
9019 West Lane
Stockton, California 95210

Rob Bigalke
KLSU
39 Hodges Hall
Baton Rouge, Louisiana 70803-3906

Douglas Rowlett, Ph.D
iRADIO
10141 Cash Road
Stafford, Texas 77477

Jamie Hoover
KUGS-FM
Western Washington University
Bellingham, Washington 98225

Andrew P. Sutor IV
Entercom Communications Corp.
401 City Avenue
Suite 409
Bala Cynwyd, Pennsylvania 19004
Counsel for Entercom Communications Corp.

Brian Hurley
Detroit Industrial Underground
1700 S. Walton
Westland, Michigan 48186

David G. LeGrand
2300 West Sahara Avenue
Eighth Floor
Box 8
Las Vegas, Nevada 89102
Counsel for Webcaster Alliance

Thomas Mondell
whereveRadio.com
P.O. Box 6012
Ellwood City, Pennsylvania 16117

Robert Abbett
Hot Spots Hawai'i, Inc.
333 Maluniu Avenue
Kailua, Hawaii 96734

Kristen D. Northern
Emmis Communications Corp.
40 Monument Circle
Suite 700
Indianapolis, Indiana 46204

Ken Van Prooyen
RBC Ministries
Box 2222
Grand Rapids, Michigan 49555-0001

Tracy Barnes
ASGAARD Interactive Multimedia, LLC
Hardradio.com
3504 Locust Street
Rowlett, Texas 75089



STANFORD LAW SCHOOL

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Center for Internet and Society
Law and Technology Clinic

Tel: 650.723.5674
Fax: 650.723.4426

January 14, 2003

Via Express Mail

Copyright Arbitration Royalty Panel
Post Office Box 70977
Southwest Station
Washington, D.C. 20024

Re: Motion to Accept a Late-Filed Notice of Intent to Participate
Docket No. 2002-1 CARP DTRA 3

Dear Panel:

Collegiate Broadcasters, Inc., through counsel, hereby submits for filing its **Motion to Accept a Late-Filed Notice of Intent to Participate** in the Copyright Office's proceedings to adjust royalty rates and terms. Enclosed for filing, please find an original plus five (5) copies of this motion, including proof of service on all interested parties.

Please do not hesitate to contact me if you have questions. I can be reached at: (650) 724-0517.

Thank you for your attention to this matter.

Sincerely,

Elizabeth H. Rader

EHR/jsn
Enclosures

RECEIVED

JAN 16 2003

GENERAL COUNSEL
OF COPYRIGHT

RECEIVED

COPY

JAN 16 2003

**GENERAL COUNSEL
OF COPYRIGHT**

Digital Performance Right In Of Sound Recordings and Ephemeral Recordings

Docket No. 2002-1 CARP DTRA 3

NOTICE OF INTENT TO PARTICIPATE

² A copy of Federal Express's tracking statement showing delivery on December 20, 2002 is attached hereto.

listed as a party, counsel was told that the Notice was not received in the General Counsel's office until December 24, 2002 and thus deemed late-filed. Accordingly, CBI moves that the Copyright Office accept its Notice of Intent to Participate.

The Library considers motions to accept Notices of Intent to Participate which it deems late-filed applying a two- part test, the parts being 1) the disruption to the proceeding caused by allowing the moving party to participate; and 2) good cause for accepting the Notice. Order in Docket No. 99-3 CARP DD 95-98 (August 5, 1999); Order in Docket No. 99-6 DTRA (November 30, 1999). Both factors favor CBI's Motion.

Accepting the Notice filed in the Copyright General Counsel's office one day after December 23, 2002 will not disrupt the proceeding. The proceeding is at the most preliminary of stages. No schedule has yet been announced for the filing of direct cases, so preparation of direct cases cannot have been compromised. Thus there is no prejudice to other parties.

There is good cause for accepting the late-filed notice. CBI's counsel used Federal Express, a reliable overnight service, with the reasonable expectation of having CBI's notice received in the Copyright Office General Counsel's office on December 20, three days before the deadline. The envelope containing CBI's notices addressed to the General Counsel's office was in fact received by the Copyright Office's designated mail-receiving facility, signed for by "R. Williams," on December 20, 2002, three days before the deadline. The reason for the "late filing" of the Notice was the Copyright Office's standing order to Federal Express, in the aftermath of the 2001 anthrax incidents, to re-direct envelopes addressed to the General Counsel's office to a facility in Capitol

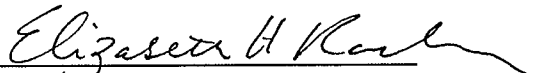
Heights, Maryland, so they may be irradiated to inactivate any dangerous biological substances. In these circumstances, CBI submits it would be appropriate for the Notice to be deemed received in the General Counsel's office as of the date received in the facility to which the Office intentionally diverted its incoming mail.

CBI has a record of timely filings in the rulemaking on requirements for notice and record keeping for use of sound recordings under statutory license. This weighs in favor of accepting its Notice. The harm to CBI and its members if they are prevented from participating in the CARP would be severe as it would lose the opportunity to participate in the process that has the potential to increase or decrease royalties and minimum fees paid by its stations. As CBI's members, in general, have small budgets, the royalty rates and minimums as a practical matter determine whether or not a member station can webcast at all. Additionally, the Panel itself would be deprived of useful evidence and legal briefing that CBI would offer on behalf of its education-affiliated, noncommercial, non-CPB member stations.

As there will be no disruption of the proceedings or prejudice to any party from accepting CBI's Notice and allowing it to participate and, whereas CBI has shown good cause why the Notice should be accepted, this motion to accept the Notice should be granted.

Dated: January 14, 2003

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 
Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517



STANFORD LAW SCHOOL

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Center for Internet and Society
Law and Technology Clinic

Tel: 650.723.5674
Fax: 650.723.4426

18 December 2002

Via Federal Express

Copyright Arbitration Royalty Panel
Office of the General Counsel
James Madison Memorial Building
Room LM-403
First and Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Notice of Intent to Participate
Docket No. 2002-1 CARP DTRA 3

Greetings:

Enclosed pursuant to your November 20, 2002 request for notices of intent to participate, please find an original plus five copies of Collegiate Broadcasters Inc.'s **Notice of Intent to Participate** in the Copyright Office's proceedings to adjust royalty rates and terms.

Sincerely,

Elizabeth H. Rader

EHR/jsn
Enclosures

cc: Mr. Will Robedee (with enclosures)

Docket No. 2002-1 CARP DTRA 3

Collegiate Broadcasters Inc. (“CBI”), a nonprofit organization of about 100 members who are college radio, television and Internet broadcasters, gives notice of its intent to participate in the Copyright Arbitration Royalty Panel Proceedings to adjust royalty rates and terms under the statutory license for eligible nonsubscription services to make certain digital audio transmissions of sound recordings for the 2003-2004 period.

William Robedee
6100 South Main Street
Rice University –MS 529
Houston TX 77005

Congress has provided the Librarian and the arbitration panel great latitude in determining how costs of royalty adjustment proceedings are to be apportioned among the participants. The risk that costs will be apportioned among participants without regard for their size or financial resources, as they were in CARP DTRA 1 & 2, raises a bar to participation for those who cannot afford to pay the arbitrators. CBI asks that the Copyright Office consider the needs of small entities and particularly of nonprofit broadcasters affiliated with educational institutions in establishing procedures for this CARP and make some provision for such organizations to participate without incurring prohibitive costs, such as waiving costs for such organizations or allowing such organizations to participate in a limited manner, for limited, pre-defined costs, or other measures in accordance with the Regulatory Flexibility Act, in order to provide the panel with sufficient evidence on which to base its decisions.

Dated: December 18, 2002

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 

Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517

FedEx Express
Customer Support
Domestic Trade
3876 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4843

Telephone 901-469-4600



January 10, 2003

IVRTRACK
(650) 723-4426

Dear IVRTRACK:

Our records reflect the following delivery information for the shipment with the tracking number 836798638310.

Delivery Information:

Signed For By: R.WILLIAMS

A handwritten signature in black ink, appearing to read "R. Williams", followed by a vertical line.

Delivered to: 9140 E HAMP DR CAP HTS MD

Delivery Date: December 20, 2002

Delivery Time: 12:00 PM

Shipping Information:

Shipment Reference Information: 1-DCD-092 WB8271

Tracking No: 836798638310

Ship Date: December 19, 2002

Shipper: ELIZABETH H RADER
CR
CR
STA, CA 943058610
US

Recipient: DAVID CARSON ESQ
COPRIGHT ARBITRATION
ROYALTY
1ST INDEPENDENCE AVE SE
LM-403
WASHINGTON, DC 20559
US

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service
1-800-Go-FedEx (1-800-463-3339)
Reference No: R2003011000068096302

This Information is provided subject to the FedEx Service Guide.

PROOF OF SERVICE

I, Joanne Newman do hereby certify and declare as follows:

I am over the age of 18 years, and not a party to the instant proceedings. I am employed in the county of Santa Clara, California. My business address is: 559 Nathan Abbott Way, Stanford, California.

On January 14, 2003 I caused to be served the following document:

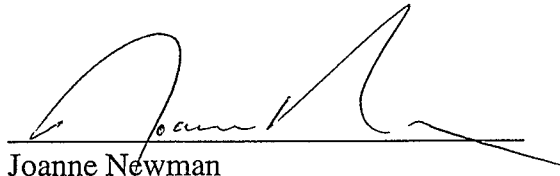
MOTION TO ACCEPT A LATE-FILED NOTICE OF INTENT TO PARTICIPATE

via First Class Mail by placing one true copy of the above document in a properly sealed and addressed envelope for regular mail delivery, and deposited in a station mailbox routinely maintained by the United States Post Office, in conformity with the usual business practices of Stanford University.

Proper service was made on the individuals appearing on the attached Service List.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January 2003 at Palo Alto, California.



Joanne Newman

SERVICE LIST
Docket No. 2002-1 CARP DTRA3

Kenneth L. Steintal
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
*Counsel for BET Interactive LLC, America
Online, Inc., MTV Networks, MusicMatch,
Inc., Yahoo! Inc., Live365 Inc., and
Listen.com*

Cary H. Sherman
Steven M. Marks
Susan Chertkof Munsat
Gary R. Greenstein
Recording Industry Association of America,
Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
*Counsel for Recording Industry
Association of America, Inc., and
SoundExchange*

Jim Hayes
Washington University
Campus Box 1068
One Brookings Drive
St. Louis, Missouri 63130

David D. Oxenford
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
*Counsel for Educational Media
Foundation and Aritaur Communications,
Inc.*

Patricia Polach
Bredhoff & Kaiser, PLLC
805 – 15th Street, N.W.
Suite 1000
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Musicians of the United States and Canada*

Michael N. Stone
Fun With Radio/WWCD
503 S. Front Street
Columbus, Ohio 43215

Bruce D. Sokler
Fernando R. Laguarda
Susan E. McDonald
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Music Choice

Bruce G. Joseph
Karyn K. Ablin
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
*Counsel for the National Religious
Broadcasters Music License Committee,
Salem Communications Corp., Clear
Channel Communications Inc., and Sirius
Satellite Radio Inc.*

Dusty Rhodes
WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, Colorado 80962

Alan D. Woodrum
Family of Faith Radio – WFPF
610 Third Street
PO Box 227
Covington, Indiana 47932

Kevin Shively
Beethoven.com, LLC
1039 Asylum Avenue
Hartford, Connecticut 06105

Joel R. Willer
University of Louisiana at Monroe
120 Stubbs Hall
401 Bayou Drive
Monroe, Louisiana 71209

Dave Black
602 State Street
Madison, Wisconsin 53703

David E. Kennedy
140 East Market Street
York, Pennsylvania 17401

Deborah S. Proctor
WCPE
P.O. Box 828
Wake Forest, North Carolina 27588-0828

Ann Robinson
218 MU East
Oregon State University
Corvallis, Oregon 97331

Michael D. LeMay
WORQ
1075 Brookwood Drive
Suite 2C
Green Bay, Wisconsin 54304-4135

Bill Keith
46181 Joy Road
Canton, Michigan 48187

John Crigler
Melodie A. Virtue
Garvey Schubert Barer
Fifth Floor, The Flour Mill Building
1000 Potomac Street, N.W.
Washington, D.C. 20007
*Counsel for National Federation of
Community Broadcasters*

Arthur J. Levine
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
1300 I Street, N.W.
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Television and Radio Artists*

Ann E. Chaitovitz
American Federation of Television and
Radio Artists
260 Madison Avenue
New York, New York 10016

William Malone
James R. Hobson
Miller and Van Eaton, PLLC
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4320
*Counsel for Intercollegiate Broadcasting
System, Inc., and Harvard Radio
Broadcasting Company*

Jonathan Potter
Digital Media Association
1120 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Seth D. Greenstein
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005
*Counsel for Digital Media Association and
Royalty Logic, Inc.*

Barry P. Miller
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
*Counsel for Bonneville International
Corporation*

Clifford M. Harrington
Barry H. Gottfried
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
Counsel for XM Satellite Radio, Inc.

Mildred Drake
WDFB
P.O. Box 106
Danville, Kentucky 40423-0106

John Meyer
Meyer Multimedia Services
Meyer Broadcasting Corporation
10200 South Broadway
Crown Point, Indiana 46307-8559

Shirley Garner
KYCC
9019 West Lane
Stockton, California 95210

Rob Bigalke
KLSU
39 Hodges Hall
Baton Rouge, Louisiana 70803-3906

Douglas Rowlett, Ph.D
iRADIO
10141 Cash Road
Stafford, Texas 77477

Jamie Hoover
KUGS-FM
Western Washington University
Bellingham, Washington 98225

Andrew P. Sutor IV
Entercom Communications Corp.
401 City Avenue
Suite 409
Bala Cynwyd, Pennsylvania 19004
Counsel for Entercom Communications Corp.

Brian Hurley
Detroit Industrial Underground
1700 S. Walton
Westland, Michigan 48186

David G. LeGrand
2300 West Sahara Avenue
Eighth Floor
Box 8
Las Vegas, Nevada 89102
Counsel for Webcaster Alliance

Thomas Mondell
whereveRadio.com
P.O. Box 6012
Ellwood City, Pennsylvania 16117

Robert Abbett
Hot Spots Hawai'i, Inc.
333 Maluniu Avenue
Kailua, Hawaii 96734

Kristen D. Northern
Emmis Communications Corp.
40 Monument Circle
Suite 700
Indianapolis, Indiana 46204

Ken Van Prooyen
RBC Ministries
Box 2222
Grand Rapids, Michigan 49555-0001

Tracy Barnes
ASGAARD Interactive Multimedia, LLC
Hardradio.com
3504 Locust Street
Rowlett, Texas 75089

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC

RECEIVED

JAN 16 2003

GENERAL COUNSEL
OF COPYRIGHT

COPY

Digital Performance Right In
Of Sound Recordings and
Ephemeral Recordings

)
)
) Docket No. 2002-1 CARP DTRA 3
)
)

MOTION TO ACCEPT A LATE-FILED

NOTICE OF INTENT TO PARTICIPATE

On December 19, 2002, counsel for Collegiate Broadcasters Inc. ("CBI"), a nonprofit organization of about 100 members who are college radio, television and Internet broadcasters, sent an original plus five copies of CBI's Notice of Intent to Participate addressed to the Office of the General Counsel for the Copyright Office, via Federal Express overnight service.¹ On December 20, 2002, Federal Express delivered the package containing the Notice to an address in Capitol Heights, Maryland, which had been previously designated by the Copyright Office to receive all Federal Express envelopes addressed to the Copyright Office, including those addressed to the Office of the General Counsel.² On January 9, CBI and its counsel learned that CBI was not on the Service List for Parties to the Proceeding. Upon calling to enquire why CBI was not

¹ CBI's Federal Express airbill is addressed to David Carson Esq., Copyright Arbitration Royalty Panel, James Madison Memorial Building, 1st/Independence Ave, S.E., RM LM-403, Washington DC 20559-6000. Copies of CBI's Notice and cover letter are attached hereto.

² A copy of Federal Express's tracking statement showing delivery on December 20, 2002 is attached hereto.

listed as a party, counsel was told that the Notice was not received in the General Counsel's office until December 24, 2002 and thus deemed late-filed. Accordingly, CBI moves that the Copyright Office accept its Notice of Intent to Participate.

The Library considers motions to accept Notices of Intent to Participate which it deems late-filed applying a two- part test, the parts being 1) the disruption to the proceeding caused by allowing the moving party to participate; and 2) good cause for accepting the Notice. Order in Docket No. 99-3 CARP DD 95-98 (August 5, 1999); Order in Docket No. 99-6 DTRA (November 30, 1999). Both factors favor CBI's Motion.

Accepting the Notice filed in the Copyright General Counsel's office one day after December 23, 2002 will not disrupt the proceeding. The proceeding is at the most preliminary of stages. No schedule has yet been announced for the filing of direct cases, so preparation of direct cases cannot have been compromised. Thus there is no prejudice to other parties.

There is good cause for accepting the late-filed notice. CBI's counsel used Federal Express, a reliable overnight service, with the reasonable expectation of having CBI's notice received in the Copyright Office General Counsel's office on December 20, three days before the deadline. The envelope containing CBI's notices addressed to the General Counsel's office was in fact received by the Copyright Office's designated mail-receiving facility, signed for by "R. Williams," on December 20, 2002, three days before the deadline. The reason for the "late filing" of the Notice was the Copyright Office's standing order to Federal Express, in the aftermath of the 2001 anthrax incidents, to re-direct envelopes addressed to the General Counsel's office to a facility in Capitol

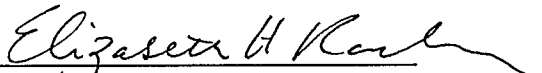
Heights, Maryland, so they may be irradiated to inactivate any dangerous biological substances. In these circumstances, CBI submits it would be appropriate for the Notice to be deemed received in the General Counsel's office as of the date received in the facility to which the Office intentionally diverted its incoming mail.

CBI has a record of timely filings in the rulemaking on requirements for notice and record keeping for use of sound recordings under statutory license. This weighs in favor of accepting its Notice. The harm to CBI and its members if they are prevented from participating in the CARP would be severe as it would lose the opportunity to participate in the process that has the potential to increase or decrease royalties and minimum fees paid by its stations. As CBI's members, in general, have small budgets, the royalty rates and minimums as a practical matter determine whether or not a member station can webcast at all. Additionally, the Panel itself would be deprived of useful evidence and legal briefing that CBI would offer on behalf of its education-affiliated, noncommercial, non-CPB member stations.

As there will be no disruption of the proceedings or prejudice to any party from accepting CBI's Notice and allowing it to participate and, whereas CBI has shown good cause why the Notice should be accepted, this motion to accept the Notice should be granted.

Dated: January 14, 2003

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 
Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517



STANFORD LAW SCHOOL

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Center for Internet and Society
Law and Technology Clinic

Tel: 650.723.5674
Fax: 650.723.4426

18 December 2002

Via Federal Express

Copyright Arbitration Royalty Panel
Office of the General Counsel
James Madison Memorial Building
Room LM-403
First and Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Notice of Intent to Participate
Docket No. 2002-1 CARP DTRA 3

Greetings:

Enclosed pursuant to your November 20, 2002 request for notices of intent to participate, please find an original plus five copies of Collegiate Broadcasters Inc.'s **Notice of Intent to Participate** in the Copyright Office's proceedings to adjust royalty rates and terms.

Sincerely,

Elizabeth H. Rader

EHR/jsn
Enclosures

cc: Mr. Will Robedee (with enclosures)

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC

Digital Performance Right In
Of Sound Recordings and
Ephemeral Recordings

)
)
) Docket No. 2002-1 CARP DTRA 3
)
)

NOTICE OF INTENT TO PARTICIPATE

Collegiate Broadcasters Inc. ("CBI"), a nonprofit organization of about 100 members who are college radio, television and Internet broadcasters, gives notice of its intent to participate in the Copyright Arbitration Royalty Panel Proceedings to adjust royalty rates and terms under the statutory license for eligible nonsubscription services to make certain digital audio transmissions of sound recordings for the 2003-2004 period.

Correspondence and filings sent to CBI concerning this CARP should be addressed to:

William Robedee

6100 South Main Street

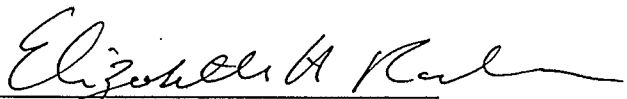
Rice University –MS 529

Houston TX 77005

Congress has provided the Librarian and the arbitration panel great latitude in determining how costs of royalty adjustment proceedings are to be apportioned among the participants. The risk that costs will be apportioned among participants without regard for their size or financial resources, as they were in CARP DTRA 1 & 2, raises a bar to participation for those who cannot afford to pay the arbitrators. CBI asks that the Copyright Office consider the needs of small entities and particularly of nonprofit broadcasters affiliated with educational institutions in establishing procedures for this CARP and make some provision for such organizations to participate without incurring prohibitive costs, such as waiving costs for such organizations or allowing such organizations to participate in a limited manner, for limited, pre-defined costs, or other measures in accordance with the Regulatory Flexibility Act, in order to provide the panel with sufficient evidence on which to base its decisions.

Dated: December 18, 2002

Respectfully Submitted,
Collegiate Broadcasters, Inc.

By: 

Elizabeth H. Rader
Stanford Law School
Center for Internet & Society
559 Nathan Abbott Way
Stanford, CA 94305-8610
(650) 724-0517

FedEx Express
Customer Support
Domestic Trade
3876 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone 901-469-4600



January 10, 2003

IVRTRACK
(650) 723-4426

Dear IVRTRACK:

Our records reflect the following delivery information for the shipment with the tracking number 836798638310.

Delivery Information:

Signed For By: R.WILLIAMS

A handwritten signature in black ink, appearing to read "R. Williams", followed by a vertical line.

Delivered to: 9140 E HAMP DR CAP HTS MD

Delivery Date: December 20, 2002

Delivery Time: 12:00 PM

Shipping Information:

Shipment Reference Information: 1-DCD-092 WB8271

Tracking No: 836798638310

Ship Date: December 19, 2002

Shipper: ELIZABETH H RADER
CR
CR
STA, CA 943058610
US

Recipient: DAVID CARSON ESQ
COPRIGHT ARBITRATION
ROYALTY
1ST INDEPENDENCE AVE SE
LM-403
WASHINGTON, DC 20559
US

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service
1-800-Go-FedEx (1-800-463-3339)
Reference No: R2003011000068096302

This Information is provided subject to the FedEx Service Guide.

PROOF OF SERVICE

I, Joanne Newman do hereby certify and declare as follows:

I am over the age of 18 years, and not a party to the instant proceedings. I am employed in the county of Santa Clara, California. My business address is: 559 Nathan Abbott Way, Stanford, California.

On January 14, 2003 I caused to be served the following document:

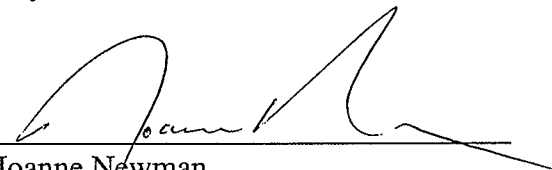
MOTION TO ACCEPT A LATE-FILED NOTICE OF INTENT TO PARTICIPATE

via **First Class Mail** by placing one true copy of the above document in a properly sealed and addressed envelope for regular mail delivery, and deposited in a station mailbox routinely maintained by the United States Post Office, in conformity with the usual business practices of Stanford University.

Proper service was made on the individuals appearing on the attached Service List.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January 2003 at Palo Alto, California.



Joanne Newman

SERVICE LIST
Docket No. 2002-1 CARP DTRA3

Kenneth L. Steintal
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
*Counsel for BET Interactive LLC, America
Online, Inc., MTV Networks, MusicMatch,
Inc., Yahoo! Inc., Live365 Inc., and
Listen.com*

Cary H. Sherman
Steven M. Marks
Susan Chertkof Munsat
Gary R. Greenstein
Recording Industry Association of America,
Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
*Counsel for Recording Industry
Association of America, Inc., and
SoundExchange*

Jim Hayes
Washington University
Campus Box 1068
One Brookings Drive
St. Louis, Missouri 63130

David D. Oxenford
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
*Counsel for Educational Media
Foundation and Aritaur Communications,
Inc.*

Patricia Polach
Bredhoff & Kaiser, PLLC
805 – 15th Street, N.W.
Suite 1000
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Musicians of the United States and Canada*

Michael N. Stone
Fun With Radio/WWCD
503 S. Front Street
Columbus, Ohio 43215

Bruce D. Sokler
Fernando R. Laguarda
Susan E. McDonald
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Music Choice

Bruce G. Joseph
Karyn K. Ablin
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
*Counsel for the National Religious
Broadcasters Music License Committee,
Salem Communications Corp., Clear
Channel Communications Inc., and Sirius
Satellite Radio Inc.*

Dusty Rhodes
WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, Colorado 80962

Alan D. Woodrum
Family of Faith Radio – WFPP
610 Third Street
PO Box 227
Covington, Indiana 47932

Kevin Shively
Beethoven.com, LLC
1039 Asylum Avenue
Hartford, Connecticut 06105

Joel R. Willer
University of Louisiana at Monroe
120 Stubbs Hall
401 Bayou Drive
Monroe, Louisiana 71209

Dave Black
602 State Street
Madison, Wisconsin 53703

David E. Kennedy
140 East Market Street
York, Pennsylvania 17401

Deborah S. Proctor
WCPE
P.O. Box 828
Wake Forest, North Carolina 27588-0828

Ann Robinson
218 MU East
Oregon State University
Corvallis, Oregon 97331

Michael D. LeMay
WORQ
1075 Brookwood Drive
Suite 2C
Green Bay, Wisconsin 54304-4135

Bill Keith
46181 Joy Road
Canton, Michigan 48187

John Crigler
Melodie A. Virtue
Garvey Schubert Barer
Fifth Floor, The Flour Mill Building
1000 Potomac Street, N.W.
Washington, D.C. 20007
*Counsel for National Federation of
Community Broadcasters*

Arthur J. Levine
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
1300 I Street, N.W.
Washington, D.C. 20005-3315
*Counsel for the American Federation of
Television and Radio Artists*

Ann E. Chaitovitz
American Federation of Television and
Radio Artists
260 Madison Avenue
New York, New York 10016

William Malone
James R. Hobson
Miller and Van Eaton, PLLC
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4320
*Counsel for Intercollegiate Broadcasting
System, Inc., and Harvard Radio
Broadcasting Company*

Jonathan Potter
Digital Media Association
1120 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Seth D. Greenstein
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005
*Counsel for Digital Media Association and
Royalty Logic, Inc.*

Barry P. Miller
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
*Counsel for Bonneville International
Corporation*

Clifford M. Harrington
Barry H. Gottfried
Cynthia D. Greer
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20006
Counsel for XM Satellite Radio, Inc.

Mildred Drake
WDFB
P.O. Box 106
Danville, Kentucky 40423-0106

John Meyer
Meyer Multimedia Services
Meyer Broadcasting Corporation
10200 South Broadway
Crown Point, Indiana 46307-8559

Shirley Garner
KYCC
9019 West Lane
Stockton, California 95210

Rob Bigalke
KLSU
39 Hodges Hall
Baton Rouge, Louisiana 70803-3906

Douglas Rowlett, Ph.D
iRADIO
10141 Cash Road
Stafford, Texas 77477

Jamie Hoover
KUGS-FM
Western Washington University
Bellingham, Washington 98225

Andrew P. Sutor IV
Entercom Communications Corp.
401 City Avenue
Suite 409
Bala Cynwyd, Pennsylvania 19004
Counsel for Entercom Communications Corp.

Brian Hurley
Detroit Industrial Underground
1700 S. Walton
Westland, Michigan 48186

David G. LeGrand
2300 West Sahara Avenue
Eighth Floor
Box 8
Las Vegas, Nevada 89102
Counsel for Webcaster Alliance

Thomas Mondell
whereveRadio.com
P.O. Box 6012
Ellwood City, Pennsylvania 16117

Robert Abbett
Hot Spots Hawai'i, Inc.
333 Maluniu Avenue
Kailua, Hawaii 96734

Kristen D. Northern
Emmis Communications Corp.
40 Monument Circle
Suite 700
Indianapolis, Indiana 46204

Ken Van Prooyen
RBC Ministries
Box 2222
Grand Rapids, Michigan 49555-0001

Tracy Barnes
ASGAARD Interactive Multimedia, LLC
Hardradio.com
3504 Locust Street
Rowlett, Texas 75089